

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	No. 1:19-cr-10081-IT
)	
DONNA HEINEL, WILLIAM FERGUSON,)	
and JOVAN VAVIC,)	
)	
Defendants.)	

GOVERNMENT’S MOTION TO MODIFY THE PRETRIAL ORDER

The government respectfully submits this motion to adjust the Court’s Pretrial Order (Dkt. 783) to the extent that it requires the government to produce its exhibits and Jencks Act materials on September 21, 2021, approximately eight weeks before trial.

The government, together with defendants Jovan Vavic and William Ferguson, previously proposed that the Court set a deadline for these materials of October 26, 2021, three weeks before trial, consistent with the Court’s standard pre-trial order. The accelerated schedule imposes a difficult burden on the government, because at the time of the Court’s deadline, two of the Assistant United States Attorneys assigned to the November trial will be in trial before the Hon. Nathaniel M. Gorton. (Jury selection for that trial begins next week, with opening statements the following week.) Since the government submitted its proposed pretrial order, a third Assistant United States Attorney (“AUSA”) assigned to this case has taken extended leave due to a family emergency and is not currently expected to participate in the trial of this matter. The undersigned AUSA joined this case just three weeks ago.

The government is also working assiduously to streamline the case before trial. The government today moved to dismiss Count One of the Second Superseding Indictment. Defendant Ernst has indicated that he intends to enter a plea of guilty and not proceed to trial. In addition,

there are ongoing discussions that could result in one additional resolution prior to trial. The government understands that defendant Donna Heinel has requested earlier exhibit deadlines. The government has sought to assist Ms. Heinel's counsel to locate items in the discovery in response to her requests and will continue to do so.¹

These facts, which will result in a simpler trial in November, favor the use of the Court's standard pretrial schedule. The government is mindful, however, that the Court may still wish to provide defense counsel additional time to review exhibits. Accordingly, the government respectfully requests that the Court adjust the deadline for exhibits to October 19, 2021 (twenty-eight days before trial), which would at least allow the trial team a more realistic opportunity to complete its prior trial before the deadline.²

The government further notes that the Order requires the defendants' exhibits to be produced and the parties to file objections to exhibits and a joint exhibit list on November 2, 2021. The parties' proposal that all these deadlines fall on the same day was inadvertent. In the interest of practicality, the government requests that the Court allow some time for the government to review the defendants' exhibits before requiring the government to file objections and for the parties to confer on a joint exhibit list, which is also due on November 2, 2021. Accordingly, the

¹In 2019, the government also provided Heinel's counsel with a reverse proffer highlighting key evidence it intends to present.

²The government notes that the Court has also set an early deadline for Jencks Act disclosures. The government has already made extensive Jencks Act disclosures, and will continue to do so on a rolling basis as it conducts additional witness preparation. However, it is settled law in the First Circuit that a court "may not compel the disclosure of [Jencks] statements before the conclusion of [the witnesses'] direct testimony." *United States v. Grandmont*, 680 F.2d 867, 874 (1st Cir. 1982); *see also United States v. Tejeda*, 974 F.2d 210, 217 (1st Cir. 1992) (same); *United States v. Owens*, 933 F. Supp. 76, 81 (D. Mass. 1996) (Young, J.) ("[D]istrict Court judges may not, over the government's objection, compel pretrial disclosure of nonexculpatory Jencks Act material earlier than the close of a witness's testimony on direct examination.").

government respectfully requests that the Court set the deadline for the defendants' production of exhibits and witness statements to one week earlier, October 26, 2021.

Respectfully submitted,

NATHANIEL R. MENDELL
Acting United States Attorney

By: /s/Kriss Basil
JUSTIN D. O'CONNELL
KRISTEN A. KEARNEY
LESLIE A. WRIGHT
KRISS BASIL
Assistant United States Attorneys

LOCAL RULE 7.1(a)(2) CERTIFICATION

Before filing this documents, I certify that the government shared a draft with counsel for the defendants and offered to confer. Defendant Donna Heinel, through counsel, opposes this motion.

/s/Kriss Basil
Kriss Basil
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants .

/s/Kriss Basil
Kriss Basil
Assistant United States Attorney